

JAMES DEAN, JR.,
Plaintiff,
vs.
Draper & Kramer, Inc.,
Defendant.

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)
) No. 09 C 4374
) Chicago, Illinois
) December 28, 2010
) 9:00 a.m.
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)
)

APPEARANCES:

For the Defendant: K & L GATES LLP
70 West Madison Street
Suite 3100
Chicago, Illinois 60602
BY: MR. ALAN M. SERWER

Official Court Reporter: MAELLEN E. PITTMAN, FCRR, RDR
219 South Dearborn Street
Room 2342
Chicago, Illinois 60604
(312) 435-5576

1 (Proceedings heard in open court:)

2 THE CLERK: 09 C 4374, Dean versus Draper & Kramer.

3 MR. SERWER: Alan Serwer with K & L Gates on behalf of
4 Draper & Kramer.

5 Yesterday when I got back to the office from being out
6 of town I received what I believe was a telephone call from Mr.
7 Dean, was which was very hard to understand, but as I heard what
8 he said he said he would be out of town today.

9 I tried to call your chambers to --

10 THE COURT: He tried to call chambers.

11 MR. SERWER: No, he did not -- he did?

12 THE COURT: He tried to call chambers. Unfortunately,
13 he reached me, and I simply said to him I can't deal with an ex
14 parte communication.

15 So I don't know what his proposed message was, but he
16 had been notified by mail on December 20th about today's date.

17 MR. SERWER: Yes. Your Honor, we have given one week
18 notice, because all we have is a p.o. box.

19 THE COURT: I know that.

20 MR. SERWER: And we added a day for Christmas in there.
21 Calculating that, today would be the appropriate amount of
22 notice.

23 THE COURT: Right. So I do think he got appropriate
24 notice.

25 MR. SERWER: And I wanted to report that.

1 THE COURT: well, you know, it's regrettable. He really
2 can't -- as he seems to think is appropriate for him -- make the
3 rules himself.

4 If he was anticipating being away, the manner of doing
5 that and notifying everybody is not to call up and leave a
6 telephonic message, just as he -- it was inappropriate for him to
7 do that in terms of placing a call to chambers, which would have
8 been ex parte to begin with.

9 And accordingly -- and he has been playing the system,
10 regrettable, for just an extended period of time, and your motion
11 demonstrates a continued scofflaw position on his part; I had
12 warned him previously, but that warning didn't seem to do any
13 good. And I'm granting your motion to dismiss for want of
14 prosecution.

15 Now, that means that, as you know, Rule 59(e) says that
16 he has got 28 days within which to seek to vacate that for good
17 cause shown. But he has got to have good cause.

18 I am -- I know that you have asked -- and properly --
19 for reimbursement for at least part of the attorneys' fees that
20 he has piled up as a result of his recalcitrance. And I will
21 simply leave to you what you may want to do in terms of bringing
22 that on and quantifying it by appropriate notice to him.

23 So I'm simply entering and continuing that part.

24 I'm retaining jurisdiction obviously for purposes of
25 considering the shifting of fees under the circumstances.

1 MR. SERWER: All right.

2 THE COURT: So your motion -- your motion to dismiss for
3 want of prosecution is granted.

4 MR. SERWER: Thank you, your Honor.

5 THE COURT: Thank you.

6 THE CLERK: That's it.

7 (Proceedings recessed.)

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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3	JAMES DEAN, JR.,)	
4	Plaintiff,)	
5	vs.)	No. 09 C 4374
6)	Chicago, Illinois
7	Draper & Kramer, Inc.,)	December 28,
8	Defendant.)	10:00 a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE MILTON I. SHADUR
AND A JURY

APPEARANCES:

Plaintiff, Pro Se: MR. JAMES DEAN, JR.
Post Office Box 803824
Chicago, Illinois 60680

For the Defendant (telephonically):

K & L GATES LLP
70 West Madison Street
Suite 3100
Chicago, Illinois 60602
BY: MR. ALAN M. SERWER

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Chicago, Illinois 60604
(312) 435-5576

1 (Proceedings heard in open court:)

2 THE CLERK: 09 C 4374, Dean versus Draper & Kramer.

3 THE COURT: Mr. Dean.

4 MR. SERWER (telephonically): Good morning, your Honor.

5 This is Alan Serwer with K & L Gates on behalf of Draper
6 & Kramer, the defendant.

7 THE PLAINTIFF: Hello. I'm James Dean.

8 THE COURT: Mr. Dean appeared after I had already dealt
9 with the motion to dismiss for want of prosecution.

10 Mr. Serwer had reported that Mr. Dean had left a
11 telephonic message saying that he was going to be out of the
12 City.

13 And based on the submission that had been made, and the
14 fact of no response having been given other than to say that he
15 was not going to be present, I found that the motion was
16 well-taken and, accordingly, I granted the motion.

17 I also reserved ruling on the other part of the motion,
18 which was for the imposition of sanctions in the way of shifting
19 of fees, something that Mr. Serwer can bring on by virtue of an
20 appropriate motion that would require, again, a notice of motion.

21 So, Mr. Dean, I heard --

22 THE PLAINTIFF: You're heard, sir.

23 May I interrupt? If I may fully understand what is
24 happening at this very moment.

25 My -- there has been an imposition on Draper &

1 Kramer's -- well, I guess I forced myself into this position here
2 on the 28th of December. I was asked by Mr. Sewer and his
3 assistant --

4 THE COURT: This is Mr. Serwer.

5 THE PLAINTIFF: Sir, I've tried to get the correct
6 pronunciation of his name.

7 THE COURT: It's Serwer.

8 THE PLAINTIFF: Yes. And I'm sure that it's a beautiful
9 name, but I choose not to utter it anymore.

10 THE COURT: well, I'm sorry, if you are going to --

11 THE PLAINTIFF: I don't want to argue with you, your
12 Honor.

13 THE COURT: Just a minute.

14 THE PLAINTIFF: Concerning the relevance --

15 THE COURT: Mr. Dean, if you will listen for just a
16 moment? Mr. Dean, will you listen to --

17 THE PLAINTIFF: Yes.

18 THE COURT: You know, you have had the problem before --

19 THE PLAINTIFF: Yes. And that is why I'm here, and this
20 Court --

21 THE COURT: Just a minute. Just a minute.

22 THE PLAINTIFF: Is giving me this very minute this
23 problem.

24 THE COURT: I expect you to be civil.

25 THE PLAINTIFF: I'm very civil, considering I have cut

1 short my vacation to be here. At a time, I might add, after it
2 was told to me after the fact that my case has been dismissed.
3 And Mr. Serwer cannot find the time in his very busy schedule to
4 be present, nor can his very ill-informed assistant.

5 I'm being very civil here. But I simply must tell you
6 the truth. And I've seen how you have added your communication
7 or your interpretation of my case to my file.

8 THE COURT: Mr. Dean, if you will listen for just a
9 moment.

10 MR. SERWER: Hello?

11 THE COURT: Mr. Dean, if you will listen for just a
12 moment.

13 THE PLAINTIFF: It's him who is not hearing.

14 THE COURT: Are you not hearing anything?

15 MR. SERWER: I was hearing some of it, yes, but there
16 were blanks.

17 THE CLERK: I'm really not sure how this phone system
18 works. We are in a different courtroom.

19 MR. SERWER: I know that. I'm hearing most of this.

20 THE PLAINTIFF: well, the court reporter can make you
21 fully aware of what I have communicated.

22 MR. SERWER: At some point --

23 THE COURT: The Judge will speak louder.

24 Mr. Dean, let me limit my comments to a single item.

25 THE PLAINTIFF: Yes.

1 THE COURT: And that is when I said you have a
2 responsibility to be civil, that means you cannot distort a
3 person's name -- just a minute -- a person's name when converting
4 the name "Serwer" into "sewer" and just as you could not be
5 appropriately characterized in some fashion other than by your
6 proper name.

7 And that's the only comment that I was making. And I
8 expect you to adhere to that because that's part of any
9 litigant's responsibility. It is civility is at the core of
10 this.

11 Now, let me just add, by the way: One thing you said,
12 Mr. Serwer was not present, that's not accurate.

13 He was here at the time that the motion came on. And he
14 had reported -- he had reported that you had left a telephonic
15 message saying that were out of the City and, therefore, could
16 not attend.

17 Now go ahead.

18 THE CLERK: Mr. Serwer, were you able to hear that?

19 MR. SERWER: Yes, I was.

20 THE CLERK: Okay. Thank you.

21 THE COURT: Go ahead, Mr. Dean.

22 MR. SERWER: Yes, I was.

23 THE CLERK: Okay.

24 THE PLAINTIFF: I have been summoned here on the 28th to
25 answer this person's -- I guess this is defendant Draper &

1 Kramer, Incorporated, second renewed motion to dismiss for want
2 of prosecution or in the alternative to compel.

3 Am I to understand if I am to present my interrogatories
4 in the appropriate format to use Rule 37 as a guide that -- and
5 if that should be given to you by January the 5th, then we might
6 move forward to a jury trial, Mr. Serwer?

7 MR. SERWER: Yes, your Honor. These answers to
8 interrogatories and response to document requests have been due
9 for -- since August. We have received various servings from
10 Mr. Dean, but none of them has come close to compliance.

11 As stated in the motion that's before the Court at this
12 time, the latest version would have -- which came to us as an
13 email in the evening hours is a series of scattered random
14 documents, many of which were totally irrelevant to this
15 litigation, some of which were partially relevant, and some of
16 which were partial documents.

17 They were undated -- I'm sorry -- unnumbered, and, more
18 to the point, there was no response to Rule 34 -- to our Rule 34
19 request. So as a consequence, I don't know, though I feel
20 confident that the reply --

21 THE PLAINTIFF: You will lose.

22 MR. SERWER: -- that the document requests having even
23 been responded to, but there is no way to determine what document
24 is in response to what request, and what request simply has not
25 been responded to at all.

1 with respect to the interrogatories, there are -- there
2 is a document which purported to be responses. But again, it
3 is --

4 THE PLAINTIFF: Are they --

5 MR. SERWER: -- completely insufficient. It is not
6 signed under oath in accordance with Rule 33. And it lacks even
7 the basics of a sufficient response to interrogatories which
8 would be a response to each subparagraph so that we could
9 determine what the response is and we could determine that they
10 are under oath.

11 And so given the fact that this has been before the
12 Court -- perhaps this is the third or fourth time in which we
13 have made this effort before -- again before filing this motion,
14 Ms. Moore in our office again attempted to get sufficient
15 response from Mr. Dean.

16 THE PLAINTIFF: Which is why he and I communicated.

17 THE CLERK: One a time.

18 THE PLAINTIFF: I'm sorry. Yes. He is continuing to --

19 THE COURT: Please do not interrupt.

20 THE PLAINTIFF: He distorts reality for you and for the
21 Court.

22 THE COURT: Please do not interrupt.

23 THE PLAINTIFF: I should have brought a pen.

24 THE COURT: Please do not interrupt.

25 All right?

1 THE PLAINTIFF: Sure. I forgive your Honor.

2 THE COURT: Let Mr. Serwer finish.

3 MR. SERWER: Miss Moore had an elaborate phone
4 conversation with Mr. Dean. And much like his behavior here,
5 it's filled with the kind of language which is inappropriate,
6 it's hostile, angry, and it simply provides not really a
7 sufficient manner of communicating with Mr. Dean.

8 She again asked him to file adequate response. We sent
9 a letter to him explaining more precisely the deficiencies. And
10 she gave him again another date. But after five months now,
11 enough now, enough.

12 And Mr. Dean did not comply with either of the dates
13 either suggested by Ms. Moore either in her letter or in that
14 phone conversation, which was hellacious for her, I must say.

15 So here we are again before the Court asking the Court
16 for relief. Because we're unable to proceed with this
17 litigation, after more than a year of it, without adequate and
18 fully sufficient responses to our discovery.

19 We do think that Mr. Dean has shown in various ways at
20 various times a complete unwillingness to comply with the Federal
21 Rules, both local and federal. And he wants to pursue this
22 litigation, but does not want to permit Draper & Kramer to
23 adequately prepare for its defense.

24 And I think frankly, your Honor, the time has come that
25 this case should be appropriately dismissed for want of

1 prosecution as the Court has been inclined to do on several
2 occasions in the past.

3 Now we're still right back where we were, and do not
4 have even remotely sufficient response as reflected in more
5 detail in the motion.

6 THE COURT: Thank you.

7 Mr. Dean.

8 THE PLAINTIFF: Sure. I'm sure that after my forensic
9 accounting of your records by Chicago Partners that I will pay
10 for, you will be provided with information necessary to mount an
11 ineffective defense.

12 Because you, sir, have violated -- not quite you, but
13 your company for which you are working -- have violated civil and
14 human rights, wantonly and repeatedly and particularly at a Hope
15 VI development that I have communicated to you and several of
16 your attorneys about.

17 Including people who are readily available to you and
18 are -- and can be subpoenaed to testify in a court of law.

19 So, sir, I quite agree, enough is enough. And if you
20 really want to know how long we have been addressing this, it's
21 been more than the time it's been present in Judge Shadur's -- on
22 his docket.

23 So unfortunately, by distorting the truth for Mr. -- or,
24 for His Honor, you are doing not only Judge Shadur and your
25 country a disservice, but also you. Because your morals, sir,

1 seem to be lacking, and being obtuse, and your responsibility to
2 understand the true essence of my complaint against your client
3 is, quite frankly, shows a complete lack professional abilities
4 to your behalf, sir. Because this could have been resolved prior
5 to this moment.

6 THE COURT: Mr. Dean -- Mr. Dean --

7 THE PLAINTIFF: You have been provided more than ample
8 evidence.

9 THE COURT: Mr. Dean -- Mr. Dean -- pardon me.

10 THE PLAINTIFF: I have not --

11 THE COURT: Pardon me, Mr. Dean, for a moment.

12 THE PLAINTIFF: Sure.

13 THE COURT: All right.

14 THE PLAINTIFF: Okay.

15 THE COURT: First of all, when we are engaged in the
16 litigation process, and you're in court, you do not address the
17 other side.

18 THE PLAINTIFF: It is morally deficient. I'm sorry.

19 THE COURT: Your remarks are to be placed before the
20 Court, just as Mr. Serwer did, and not in terms of the --

21 THE PLAINTIFF: Personal.

22 THE COURT: -- pejorative conduct that you are engaged
23 in.

24 THE PLAINTIFF: I'm sorry, sir.

25 THE COURT: Now you say you're sorry, but I must tell

1 you, I have observed you over the months here --

2 THE PLAINTIFF: Sure.

3 THE COURT: -- and you have never, never reflected that
4 you are truly sorry in terms of the manner in which you conduct
5 yourself.

6 THE PLAINTIFF: Sir, I'm quite proud --

7 THE COURT: Let me finish, if I may.

8 THE PLAINTIFF: -- of the way I conduct myself, and I
9 have --

10 THE COURT: Mr. Dean, don't interrupt the judge.
11 Mr. Dean, please do not interrupt.

12 THE PLAINTIFF: Yes, sir. I apologize.

13 THE COURT: I have the matter before me. I have read
14 the submission -- I have read the prior submissions. More than
15 having read them, I have been in court each time that the matter
16 has come before me and you have reflected a continuing,
17 continuing scofflaw perception of how you should conduct
18 yourself.

19 And Mr. -- both of you are right. Enough is enough.

20 The answer, however, is not the one that you're
21 suggesting, and that is that you get one more chance to violate
22 the rules that you have consistently violated.

23 Now, I ruled. I ruled as I did.

24 I granted the motion to dismiss for want of prosecution.
25 It has not been properly prosecuted. And I -- that's my

1 ruling --

2 THE PLAINTIFF: Sure.

3 THE COURT: -- in those terms.

4 You do not have still another opportunity to attempt to
5 cure something that you have had months and months and months to
6 comply with, and that's it.

7 That's the Court's order. Thank you.

8 THE PLAINTIFF: Well, sir, I will be immediately
9 appealing. And I do appreciate your -- and I appreciate the
10 Court's energy, and not -- I'd like for them to impart
11 information onto me as to how to proceed to the appellate process
12 initially.

13 I appreciate the time and energy and effort, and will
14 also be subpoenaing all of my court records that I might be able
15 to communicate to the federal authorities of which I'm going
16 across the street to meet. I have a fraud affidavit that I must
17 have hand-delivered to the Internal Revenue Service, and then
18 later also giving information to the Federal Bureau of
19 Investigation, as has been instructed by me.

20 I really have done all that I can, and I have done more
21 than what would be expected of any real estate broker or any
22 citizen here of the United States.

23 So I appreciate the time and energy and effort that you
24 have, and I have learned a great deal here. But this is not the
25 end of this very issue, and Draper & Kramer will not be allowed

1 to liquidate earnest moneys of individuals who in good faith
2 purchased with them.

3 And the cases that you have settled out of court that I
4 have complete files for will also be presented as evidence.

5 So just because you settled out of court doesn't mean --

6 THE COURT: I'm sorry, Mr. --

7 THE PLAINTIFF: I will be --

8 THE COURT: -- already told you --

9 THE PLAINTIFF: -- violating and committing fraud, sir.

10 Thank you.

11 THE COURT: I told you that you are not to address
12 yourself to the opposing party.

13 THE PLAINTIFF: Okay. I apologize.

14 I'm not a lawyer, and as is evident.

15 THE COURT: You have demonstrated that adequately.

16 THE PLAINTIFF: Yes. And, quite frankly, I'm not trying
17 to attempt to be a lawyer. I'm being me, an advocate for fair
18 housing, which is why I'm in your court today.

19 THE COURT: Thank you.

20 THE PLAINTIFF: So thank you.

21 MR. SERWER: Thank you, your Honor.

22 THE COURT: Thank you, Mr. Serwer.

23 We are in recess.

24 (Proceedings concluded.)

25

C E R T I F I C A T E

I, Maellen E. Pittman, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable MILTON I. SHADUR, one of the judges of said Court, at Chicago, Illinois, on December 28, 2010.

/s/ Maellen E. Pittman, FCRR, RMR

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division